



February 23, 2000

Mr. W. Lane Lanford
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326

OR2000-0649

Dear Mr. Lanford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132321.

The Public Utility Commission (the "commission") received a request for "[a] copy of the current contract between Sprint Communications and the State of Texas for provisioning of the Texas Telecommunications Relay Service," as well as "relevant documents incorporated by reference such as the applicable Sprint proposal." You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You indicate that the interests of a third party, Sprint, are implicated by the release of the information. Pursuant to Government Code section 552.305(d), you notified Sprint of the request for information. You indicate that Sprint asserts that responsive pricing information and customer identification information is excepted from disclosure. Sprint provided argument to this office asserting that the responsive information is excepted from disclosure by sections 552.024, 552.102, and 552.117 of the Government Code and apparently also raising sections 552.101 and 552.104 of the Government Code. Government Code sections 552.024, 552.102 and 552.117 apply to information about government employees and their personnel records. These exceptions do not apply to the subject information. The commission takes no position in regard to section 552.110 and Sprint provides no comment in support of this exception; no responsive information may be withheld under section 552.110.

You relate

[t]he PUCT's contract with Sprint is voluminous. It includes the original contract that incorporated the PUCT's last request for Proposals for Provision of Relay Texas Services, Sprint's proposal as submitted, and responses to PUCT's questions for clarification of the Sprint proposal. The only

information Sprint seeks to protect is pricing information and customer identification information. The objectionable information was redacted from the documents released to AT&T.

We understand your position to be that all of the responsive information is contained in a contract with the State of Texas and that you contend that section 552.104 of the Government Code excepts pricing information and customer identification information that is contained in that contract from the public disclosure requirements of the Public Information Act. The 76th Legislature amended section 552.022 of the Government Code to provide several categories of information that are not excepted from required disclosure unless they “are expressly confidential under other law.” In pertinent part this section now reads

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body

Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 at 2 (1991). Here we note that the information at issue is contained in Sprint’s current contract with the commission. You have not demonstrated that release of this information would harm the commission’s interests in the current bidding situation. Further, the protection afforded by section 552.104 may be waived by a governmental body; this exception therefore does not make information “confidential under other law” as contemplated by section 552.022. *See, e.g.* Open Records Decision No. 592 at 8 (1991). Therefore, none of the responsive information may be withheld under section 552.104 of the Government Code

Information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision, is excepted from disclosure by Government Code section 552.101. This section excepts information that is protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The common law right to privacy protects information if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern

to the public. *Id.* Sprint asserts that the name, address, and phone number of current relay customers who have agreed to serve as references should be withheld because these customers did not agree to the disclosure of this information. However, identities, home addresses and phone numbers of private citizens are not “intimate or embarrassing” information and therefore are not protected by the common law right of privacy. Open Records Decision No. 478 (1987). Furthermore, these customers are listed as references for Sprint’s contract performance. We do not believe this information is protected by common law privacy. Consequently, you must release all of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

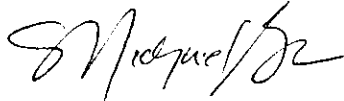
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 132321

Encl. Submitted documents

cc: Mr. Kevin Zarling
AT&T
919 Congress Avenue
Austin, Texas 78701-2444
(w/o enclosures)